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Low Khim Seong v Public Prosecutor

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HIGH COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO 42(S)-140–09 OF 2011
AMELIA TEE ABDULLAH J
17 JANUARY 2013

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Criminal Law — Cheating — Dishonesty — Deceiving potential buyer to believe that owners of land were selling land — Whether totality of evidence adduced showed that appellant and two other accused persons were guilty of common plan to cheat — Penal Code s 420

D

Criminal Procedure — Appeal — Appeal against conviction and sentence — Appellant and two others charged with cheating — Whether trial judge erred in finding that prosecution had made out case against all accused persons beyond reasonable doubt — Common intention — Whether proven

E

Criminal Procedure — Credibility — Impeachment of — Prosecution allowed to impeach credibility of second accused person — Whether trial judge's failure to pronounce ruling on impeachment at close of prosecution case was fatal — Whether omission to rule constituted miscarriage of justice

F

Evidence — Witness — Credibility of — Trial judge's findings on credibility of witnesses appealed against — Whether unsafe to rely on this evidence — Identification evidence — Whether appellant was properly identified

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The appellant and two others had carried out a plan to cheat one Chan Weoi Koon by deceiving him into believing that the owners of a piece of land situated in Damansara Petaling ('the land') had intended to sell the land. The appellant and the two other accused persons were charged with cheating under s 420 of the Penal Code read with s 34. The evidence adduced showed that the appellant had approached one Kuek Poh Guan, a business consultant ('PW3'), and a potential purchaser of the land with the story that the land belonged to the second accused person's uncle and aunt and that they had agreed to sell the land to offset an alleged debt that the second accused owed to the appellant. In order to convince PW3 and the potential purchaser that there was a piece of land for sale the appellant had to obtain a copy of the land title. Evidence was adduced as to how the appellant had misled an employee in the land office (PW5) by claiming to be the owner of the land before obtaining a copy of the grant. This was the land title shown to PW3 and the potential purchaser to strengthen the

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appellant's version of events. Thereafter, the appellant took steps to pass off two persons ('PW7 and PW8') as owners of the land so as to convince PW3 and the potential purchaser as to the relationship or connection between the alleged owners and the second accused and the appellant. The appellant also arranged for PW7 and PW8 to sign the offer to purchase so that the potential buyer would agree to buy the land and pay monies towards the purchase of the land, which he did. During the trial the prosecution was allowed to impeach the credit of the second accused as his evidence in court had materially contradicted his statement to the police. At the close of the trial the appellant was found guilty of the offence charged and sentenced to two years' imprisonment and four strokes of the rotan. This was the appellant's appeal against his conviction and sentence. In this appeal the appellant raised as grounds of appeal inter alia, the failure of the trial judge to make a ruling on the impeachment of the second accused at the close of the prosecution case, the unreliability of PW5's identification of the appellant, the credibility of PW3 as a witness and the issue of absence of common intention as between the appellant and the other accused persons.

Held, dismissing the appeal:

(1) The trial judge had duly considered the credibility of the second accused in her grounds of judgment. Although the trial judge had not clearly made a ruling that the credibility of the second accused stood impeached, she had considered the effect of the unexplained discrepancies and found the second accused to be unworthy of credit. Further, the failure to pronounce a ruling on the impeachment was not fatal in this case but curable under s 422 of the CPC. In the light of the fact that the trial judge had clearly considered the issue in her grounds of judgment, the omission to rule that the second accused was impeached constituted a mere irregularity, which had not occasioned a miscarriage of justice (see paras 9–10).

(2) The evidence of PW5 showed that there was more than sufficient interaction between him and the appellant to enable him to make a positive identification of the appellant. Thus, the trial judge was not in error in concluding that it was the appellant who had gone to the Land Office on two separate occasions to collect the grant and that he had spoken to PW5 on both occasions. Further, PW5's inability to put into words a description of the appellant did not affect his identification of the appellant. As such, on the totality of the evidence, PW5 was a credible witness and there was no discrepancy as regards the identification of the appellant as the person who had collected the grant (see paras 13–14).

(3) Notwithstanding the fact that PW3 may not have viewed the actual land title, what was more relevant and pertinent was that the document he was shown had the effect of convincing the potential buyer that the land

which was offered for sale existed. In any case, the production of an actual land title was not a pre-requisite to prove the charge of cheating under s 420 of the Penal Code. Thus, on this issue, the court had no basis to doubt PW3's credibility and the trial judge's reliance on his testimony was not misplaced (see paras 18–21).

(4) The totality of the evidence adduced showed that the appellant and the two other accused persons were acting in concert to a common plan to cheat by selling the land, with each of the accused persons having their own role to play. As such, the trial judge had arrived at the correct conclusion when she found that the prosecution had succeeded in proving a common intention among the three accused persons to commit the offence for which they were convicted. Hence, the appellant was properly convicted on the charge against him (see paras 27–30).

[Bahasa Malaysia summary

Perayu dan dua yang lain telah melakukan perancangan untuk menipu seorang yang bernama Chan Weoi Koon dengan memperdayakannya untuk mempercayai bahawa pemilik-pemilik sebidang tanah yang terletak di Damansara Petaling ('tanah tersebut') berniat untuk menjual tanah tersebut. Perayu dan dua tertuduh yang lain dituduh di bawah s 420 Kanun Keseksaan dibaca bersama dengan s 34. Keterangan menunjukkan bahawa perayu telah mendekati seorang yang bernama Kuek Poh Guan, seorang perunding perniagaan ('PW3') dan pembeli berpotensi tanah tersebut dengan cerita bahawa tanah tersebut dimiliki oleh bapa dan ibu saudara tertuduh kedua dan mereka bersetuju untuk menjual tanah tersebut untuk mengimbangkan hutang yang didakwa dihutangi oleh tertuduh kedua daripada perayu. Untuk menyakinkan PW3 dan pembeli berpotensi tersebut bahawa wujudnya sebidang tanah untuk dijual, perayu telah mendapatkan sesalinan hak milik tanah. Keterangan dikemukakan untuk menunjukkan bagaimana perayu telah memperdaya seorang pekerja di pejabat tanah ('PW5') dengan mendakwa dirinya sebagai pemilik tanah tersebut sebelum mendapatkan sesalinan geran. Ini adalah hak milik tanah yang ditunjukkan kepada PW3 dan pembeli berpotensi untuk menguatkan lagi versi perayu mengenai kejadian-kejadian. Selepas itu, perayu mengambil langkah untuk menyamarkan dua orang ('PW7 dan PW8') sebagai pemilik-pemilik tanah tersebut untuk meyakinkan PW3 dan pembeli berpotensi mengenai hubungan atau pertalian antara pemilik-pemilik yang didakwa dengan tertuduh kedua dan perayu. Perayu juga mengatur bagi PW7 dan PW8 untuk menandatangani tawaran pembelian agar pembeli berpotensi akan bersetuju untuk membeli tanah tersebut dan membayar wang bagi tujuan pembelian tanah tersebut, yang mana dilakukannya. Ketika perbicaraan, pihak pendakwaan dibenarkan mencabar kredit tertuduh kedua kerana keterangannya di mahkamah secara materialnya, bercanggah dengan kenyataannya kepada pihak polis. Di akhir perbicaraan, perayu didapati bersalah atas pertuduhan dan dijatuhkan hukuman dua tahun

penjara dan empat kali sebatan. Ini adalah rayuan perayu terhadap sabitan dan hukuman. Dalam rayuan ini, perayu membangkitkan alasan-alasan, antara lain, bahawa kegagalan hakim bicara untuk membuat keputusan mengenai cabaran ke atas tertuduh kedua di akhir kes pendakwaan, ketidakbolehpercayaan pengecaman perayu oleh PW5, kredibiliti PW3 sebagai saksi dan isu ketiadaan niat bersama antara perayu dan tertuduh-tertuduh yang lain.

Diputuskan, menolak rayuan:

(1) Hakim bicara telah mempertimbangkan kredibiliti tertuduh kedua dengan sewajarnya dalam alasan penghakimannya. Walaupun hakim bicara tidak membuat keputusan dengan jelas mengenai kredibiliti tertuduh kedua yang dicabar, beliau telah mempertimbangkan kesan daripada kepincangan yang tidak dijelaskan dan mendapati bahawa tertuduh kedua tidak layak akan kredit. Selanjutnya, kegagalan untuk memberi keputusan mengenai cabaran tidak menjejaskan kes dan boleh diperbetulkan di bawah s 422 Kanun Tatacara Jenayah ('KTJ'). Melihat pada fakta bahawa hakim bicara telah dengan jelas mempertimbangkan isu tersebut dalam alasan penghakimannya, ketinggalan untuk memutuskan bahawa tertuduh kedua dicabar sekadar terjumlah suatu salah aturan, yang mana tidak menyebabkan ketidakadilan (lihat perenggan 9–10).

(2) Keterangan PW5 menunjukkan bahawa terdapat lebih dari cukup interaksi antaranya dengan perayu untuk membolehkannya membuat pengecaman positif akan perayu. Dengan itu, hakim bicara tidak terkhilaf dalam memutuskan bahawa perayulah yang telah ke pejabat tanah pada dua masa berasingan untuk mengambil geran dan bahawa dia telah bercakap dengan PW5 pada kedua-dua masa tersebut. Selanjutnya, kegagalan PW5 untuk memberi gambaran mengenai perayu tidak menjejaskan pengecaman perayu. Dengan itu, berdasarkan keseluruhan keterangan, PW5 adalah saksi kredibel dan tiada kepincangan mengenai pengecaman perayu sebagai orang yang telah mengambil geran tersebut (lihat perenggan 13–14).

(3) Tanpa mengira fakta bahawa PW3 mungkin tidak melihat hak milik tanah yang sebenar, apa yang lebih relevan adalah bahawa dokumen yang ditunjukkan kepadanya mempunyai kesan untuk meyakinkan pembeli berpotensi bahawa tanah yang ditawarkan tersebut wujud. Dalam apa jua keadaan, pengemukaan hak milik tanah yang sebenar bukanlah pra-syarat untuk membuktikan pertuduhan di bawah s 420 Kanun Keseksaan. Oleh itu, mengenai isu ini, mahkamah tiada sebab untuk meragui kredibiliti PW3 dan sandaran hakim bicara pada keterangannya bukanlah tidak berasas (lihat perenggan 18–21).

(4) Keseluruhan keterangan yang dikemukakan menunjukkan bahawa

perayu dan dua orang lagi tertuduh bertindak bersama dalam rancangan yang sama untuk menipu dalam menjual tanah tersebut, dengan setiap orang tertuduh memainkan peranan masing-masing. Dengan itu, hakim bicara telah membuat keputusan yang betul apabila beliau memutuskan bahawa pihak pendakwaan telah berjaya dalam membuktikan niat bersama antara ketiga-tiga orang tertuduh untuk melakukan kesalahan yang mana mereka disabitkan atasnya. Oleh itu, perayu telah disabitkan atas kesalahan yang dituduh terhadapnya, dengan betul (lihat perenggan 27–30).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 216–222.

For cases on dishonesty, see 4(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 68–69.

Legislation referred to

Criminal Procedure Code s 422
Penal Code s 34, 420

S Mogan (S Mogan & Co) for the appellant.
Faizah bt Mohd Salleh (Deputy Public Prosecutor, Attorney General Chamber) for the respondent.

Amelia Tee Abdullah J:

DECISION

[1] The appellant, Low Khim Seong, was charged with two others for an offence under s 420 of the Penal Code which reads as follows:

> Bahawa kamu bersama-sama pada 10 Jun 2009 jam di hadapan Pejabat Tan & Faizal Advocates & Solicitors, Unit 1–10, 1st Floor, Straits Trading Building, 2 Leboh Pasar Besar, dalam Daerah Dang Wangi, dalam Negeri Wilayah Persekutuan Kuala Lumpur, bagi mencapai niat bersama kamu telah menipu Chan Weoi Koon (K/P: 750621–10–5503) dengan memperdaya beliau untuk mempercayai bahawa sebidang tan ah GM 199 Lot 833 Sungei Penaga Mukim Damansara Petaling ingin dijual oleh pemiliknya bernama Goh Cher Wen dan Wong Siew Nguk dan dengan itu kamu dengan curangnya telah mendorong beliau untuk menyerahkan sekeping cek UOB Bank No. 236310 bertarikh 20 Mei 2009 dengan nilai RM73,500 kepada Wee Wan Heng (K/P: 700829–08–5403) yang mana Chan Weoi Koon tidak akan menyerahkan cek tersebut sekiranya tidak diperdayakan sedemikian, dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 420 Kanun Keseksaan dan dibaca bersama-sama s 34 Akta yang sama.

[2] On 21 September 2011, the accused was found guilty of the offence

charged and sentenced to two years imprisonment from the date of arrest and to four strokes of the rotan. Being dissatisfied, he has filed an appeal against his conviction and sentence.

[3] The appellant has raised various grounds of appeal which can be summarised as follows:

(a) the failure of the learned HMS to make a ruling on the impeachment of the second accused;

(b) the identification of the appellant by PW5;

(c) whether PW3 is a credible witness;

(d) the non-production of the *Buku Collection Geran*;

(e) whether DW5 is a credible witness; and

(f) whether the appellant had common intention with the other accused persons.

THE FAILURE TO MAKE A RULING ON THE IMPEACHMENT OF THE SECOND ACCUSED

[4] The first broad ground of appeal relates to the failure of the learned *hakim mahkamah sesyen* ('HMS') to make a ruling in respect of the prosecution's application to impeach the credibility of the second accused, Kok Lai Heng. From p 190 of the appeal records, the court notes that on 16 Jun 2011, the learned deputy public prosecutor had applied to impeach the credit of the second accused as his evidence in court had materially contradicted his statement to the police. The learned HMS had allowed the impeachment proceedings to proceed. The second accused had initially disputed that he had made the statement to the police and hence the recording officer, Insp Mohd Noor bin Md Hanapiah, was called to proved the voluntariness of the statement and the accuracy of the disputed portions.

[5] In the course of the cross-examination of the recording officer, the appeal records reflect that the learned HMS had noted that:

> In light of the fact that OKT 2 has admitted making the statement, I disallow any questions relating to the voluntariness of the statement.

With that ruling, the only issue left was with regard to the accuracy of the recording. The court notes that at the end of the impeachment proceedings, the learned HMS had noted that a *ruling akan dibuat di akhir kes*.

[6] Learned counsel for the appellant has submitted that the learned HMS's failure to make a ruling at the close of the prosecution case had caused the following consequences:

(a) if the second accused had been impeached, his entire evidence would not have been taken into account. It follows there from that the second accused's implication of the appellant would have been omitted. Thus on a balance of probabilities, the appellant should have been acquitted; and

(b) even if the court had ruled against impeaching the second accused, this would mean that the second accused's evidence is credible and believable. The appellant believes that the second accused's evidence is favourable to the appellant.

[7] The appellant thus submits that the failure of the learned HMS to make a ruling on the impeachment 'seriously raises a doubt as to whether she had given a thought to this'.

[8] In response, the learned deputy public prosecutor has submitted that the appellant's submission on this score was without basis. Reference was made to the learned HMS's grounds of judgment at p 31 of the appeal records where she had stated as follows in para 56:

> As set out in paragraph 40, there were numerous serious contradictions and inconsistencies between his statement and evidence in regard to the material aspects of his defence. His failure and inability to proffer a cogent explanation for these discrepancies demolished his credibility. He was clearly am untruthful witness who had no regard for the truth. In my view, his lie about the recording officer not properly recording his statement was clearly an excuse invented later to save his own skin.

[9] The court is of the considered view that the learned HMS had duly considered the credibility of the second accused. She had found that the 'numerous serious contradictions and inconsistencies between his statement and evidence in regard to the material aspects of his defence' without any cogent reasons for those discrepancies showed him to be an untruthful witness and that this had 'demolished his credibility'. These words of the learned HMS clearly refer to the impeachment proceedings which were carried out to resolve the issue of the discrepancies between his statement and his evidence in court. The court is of the view that notwithstanding that the HMS may not have clearly made a ruling that the credibility of the second accused stands impeached; however, she had considered the effect of the unexplained discrepancies and found the second accused to be unworthy of credit.

[10] The court is further of the view that the failure to pronounce a ruling on the impeachment in so many words is not fatal in this case but that it is curable

under s 422 of the Criminal Procedure Code. In light of the fact that the learned HMS had clearly considered the issue as shown in her lucid grounds of judgment, the omission to rule that the evidence of the second accused was impeached constituted a mere irregularity which had not occasioned a miscarriage of justice.

THE IDENTIFICATION OF THE APPELLANT BY PW5

[11] The next issue relates to the identification of the appellant by PW5. What then is the evidence of PW5 as regards the role of the appellant and is his evidence credit worthy and reliable?

[12] PW5 is Mat Azmi bin Mohd Daud, Public Officer at land office Daerah Petaling. He sits at counter 9 and it is his job to hand over documents such as charges, transfers and duplicate grants which are ready for collection. The court notes the following excerpts from the evidence of PW5 in relation to the identification of the appellant:

(a) Saya serahkan (ID 5) kepada seorang individu yang datang berbangsa Cina. Rupanya saya kurang ingat. Saya tak pasti jika individu berbangsa Cina ini selalu datang ke Pejabat Tanah. *Saya pernah berkomunikasi denaan lelaki Cina ini. Saya boleh cam jika tengok. (OKT dicamkan)* (pp 79 & 80 of appeal records);

(b) OKT3 datang ke Pejabat Tanah bertanyakan Geran sama ada sudah siap atau belum. Kemudian saya tanyakan apa no. Geran. Lepas itu dia beritahu GM 199. Kemudian saya pergi ke belakang dan tanyakan rakan setugas saya Puan Rabiah sama ada Geran sudah siap atau belum. Puan Rabiah kata sudah. Kemudian Puan Rabiah tanya pada saya dia itu Owner atau Lawyer. Saya tanya awak Owner ke? OKT3 jawab Ya. Lepas itu saya tengok Komputer, permohonan Geran dimasukkan oleh Lawyer. Nama Lawyer Penny. Saya berkata kepada OKT3, you tak boleh ambil sebab yang masukkan ini adalah Lawyer. Saya kata jika awak nak ambil dapatkan surat kebenaran daripada Lawyer. Kemudian OKT3 pun balik.

Keesokannya OKT3 datang balik dan tunjukkan surat kebenaran dan Lawyer, Penny. Lepas itu saya ambil Geran itu dan kemudian saya terus serah kepada OKT3 dan kenakan bayaran RM20. Ada catatan dibuat semasa penyerahan. Ia dibuat dalam Buku Collection Geran. (p 81 of Appeal Records); and

(c) Selain dan OKT3, tidak ada orang lain datang bertanyakan Geran

(p 81 of appeal records).

[13] The court notes from the above testimony of PW5 that he was able to positively recall the events of the two days when the appellant (OKT3) had gone to the land office to collect the grant. The manner, in which PW5 had related the events of the two days, step by step, would speak of the interaction

that he had with OKT3. The court finds that there was more than sufficient interaction between them to enable PW5 to make a positive identification of the appellant. In light of this evidence, the court is satisfied that the learned HMS was not in error when she made a finding of fact that it was the appellant who had gone to the land office on two separate occasions to collect the grant and that he had spoken to PW5 on both occasions.

[14] Learned counsel for the appellant has also submitted that there is a discrepancy in the evidence of PW5 as he had stated during re-examination that *Semasa serahan dokumen kepada OKT3, itu adalah kali pertama saya jumpa dia*. Whilst the court agrees that this statement would appear to be somewhat odd in light of the clear evidence of PW5 that OKT3 had come on two separate occasions, the court finds that this single blip does not affect the totality of PW5's evidence as to the events of the two days when OKT3 had come to the land office for the grant. The court further finds that PW5's inability to describe the features of OKT3 does not affect his evidence that he was able to positively identify OKT3 as the person who had collected the grant. The court is of the considered view that whilst PW5 may find it difficult to put into words a description of OKT3, however this inability does not affect his identification. As such, on the totality of PW5's evidence, the court finds that PW5 is a credible witness and that there was no discrepancy in his evidence as regards his identification of the appellant as the person who had gone to collect the grant on the day in question.

WHETHER PW3 IS A CREDIBLE WITNESS

[15] Learned counsel for the appellant has also questioned the credibility of PW3, the credit-worthiness of his evidence and whether exh P5 is a land title. PW3 is Kuek Poh Guan, a business consultant who was approached by the appellant to sell the land in question. According to PW3, the appellant had told him that he had a piece of land belonging to the second accused's uncle and aunt that he wanted to sell. The appellant had told a story that the second accused owed him some monies and that the second accused's uncle and aunt had allowed him to sell the land to offset the debts.

[16] From PW3's evidence, the appellant had brought a land title that looked original and PW3 had made a copy of it. It is true that when he was shown ID 5 (as it then was), he had testified that that 'was not the one shown and given to me'. The court notes that no questions were posed to the witness in relation to this answer during cross-examination. As such, the court is left with no further elucidation as to what was the land title that was shown to PW3 and of which he had made a copy, if it was not P5.

[17] In any event, the court is of the view that this issue should not be given

a greater importance than it deserves. The offence with which the appellant was charged was an offence under s 420 of the Penal Code read with s 34. The offence is cheating and dishonestly inducing Chan Weoi Koon into delivering a UOB Bank cheque No 236310 for RM73,500 to Wee Wan Heng which he would not have done were he not so deceived. The deception practised was that the owners of the land held under GM 199 Lot 833 Sungei Penaga Mukim Damansara Petaling had intended to sell the land. The deception had worked as evidenced by the offer to purchase (P6). It is in evidence that PW1 had presented a cheque for RM73,500 (exh P1) to PW2 for the purchase of the land in the name of Sintari Sdn Bhd which was owned by PW1.

[18] In light of these circumstances, the court is of the view that the statement of PW3 that P5 was not the title that was shown to him, although puzzling, should not be allowed to assume a greater importance than it should. This issue might well have been resolved with a bit more clarification. Unfortunately it was not.

[19] The court has also considered the appellant's query as to whether exhibit P5 is a land title. Learned counsel for the appellant has submitted that it is not a title, that it is but a title search. The learned deputy has submitted that P5 is indeed a copy of the land title (Geran Tanah). The court has carefully perused P5. Whilst P5 may not be the actual land title, it is an extract of the title. At the bottom of the page, it can be seen that this is version four issued or extracted on 30 April 2009.

[20] The court is of the view that notwithstanding the question as to whether or not P5 is the actual land title, what is more relevant and pertinent is that the document P5 had the effect of convincing PW1 that the land which was offered for sale exists. The court finds that the production of an actual land title is not a prerequisite to prove the charge of cheating under s 420 of the Penal Code.

[21] Thus on this issue, the court has no basis to doubt that PW3 is a credible witness. This, the court finds that the learned HMS's reliance on his testimony was not misplaced.

THE NON-PRODUCTION OF THE BUKU COLLECTION GERAN

[22] Much ado has been made about the non-production of the *Buku Collection Geran*. PW5 had testified that *Ada catatan dibuat semasa penyerahan. la dibuat dalam Buku Collection Geran*. According to PW5, the *Buku Collection Geran* was kept in the office and could be brought to court. The court notes at p 81 of the appeal records a note that learned counsel has informed the HMS

that he had not been served with an extract of the *Buku Collection Geran*. Was this then the reason why the *Buku Collection Geran* was not produced in court?

[23] In this context, the court finds that the production of the said *Buku Collection Geran* to show the name and Ic No of the person who had collected the *Geran* would have gone a long way to resolving the issue of who had collected the *Geran*. If OKT3 really did not collect the *Geran*, then notwithstanding the fact that his counsel had not been served with an extract of the same, it would have been in his own interests to insist on the production of the said *Buku Collection Geran*. The fact that he did not do so may well point to the possibility that the evidence, if produced, would not be in his favour.

WHETHER DW5 IS A CREDIBLE WITNESS?

[24] Learned counsel for the appellant has pointed out that the prosecution's case is essentially based on the evidence of PW3 (Quek), PW5 (Mat Azmi) and DW5 (Chan Wen Tsong). The appellant submits that Chan Wen Tsong is a relation of the second accused and had admitted that he had come to court *untuk tolong OKT2 beri keterangan*. The court notes that DW5 had denied that he had been taught by the second accused to say that he was at those three places in question. He had confirmed, and reconfirmed, that he was telling the truth in court. The court is of the view that the fact that he is a relative of the second accused, without more, does not entitle the court to disbelieve him. In light of the absence of any evidence whatsoever adduced by the appellant so as to form the basis for disbelieving DW5, this court finds that the learned HMS was correct in relying on the evidence of DW5 in arriving at her decision.

WHETHER THE APPELLANT HAD COMMON INTENTION WITH THE OTHER ACCUSED PERSONS?

[25] The appellant has also raised the issue of the absence of evidence that the accused had a common intention with the other accused persons. The appellant submits that apart from PW3 and PW5, the other prosecution witnesses had not referred to the appellant during their respective evidence in court. What then is the evidence adduced which implicates the appellant? On this issue, the Court notes:

(a) PW3's evidence that it was the appellant who had approached him with a piece of land for sale. The appellant had informed him that the land belonged to Peter's (the second accused) aunt and uncle. It was the appellant who had introduced PW3 to the second accused;

(b) the appellant gave PW3 a photocopy of the land title;

(c) the appellant offered PW3 a commission of 2% on the successful completion of the sale;

(d) it was the appellant and the second accused who had made all the arrangements for P2 (the authorisation letter from the owner) and P6 (the offer to purchase) to be signed by 'Mr and Mrs Goh'. The appellant was present when 'Mrs Goh' signed the document at Subang Parade;

(e) PW3's evidence that they were supposed to meet at around 3.00 to 3.30pm on 21 May 2009 at Subang Parade as arranged by the appellant. At 4.00pm 'Mrs Goh' and the first accused came and 'Mrs Goh' signed P2 and P6. The appellant was present. Another meeting was arranged for later that night for 'Mr Goh's' signature;

(f) the appellant told PW3 that the second accused owed him monies and his aunt and uncle were allowing him to sell the land to offset the debts. PW3 had asked the second accused whether he owed the appellant monies. The second accused did not deny this, he only smiled and acknowledged.

[26] As regards PW5, evidence was adduced as to the actions of the appellant at the land office. From PW5's evidence, the court notes the following:

(a) the appellant had gone to the land office to enquire from PW5 whether the grant was ready. The appellant gave the number of the grant as GM 199;

(b) the appellant attempted to mislead PW5 by claiming to be the owner of the land. However, PW5 had realised that the application for the grant was made by a lawyer called Penny and did not surrender the grant to the appellant. Instead, the appellant was told to get an authorisation letter from the lawyer, Penny, before he could collect the grant; and

(c) The very next day, the appellant returned with the authorisation letter from the lawyer, Penny, and collected the grant.

[27] The evidence of PW3 and PW5 must be seen in the context of the whole case — the role played by him to obtain the grant from the land office, the steps taken to pass off PW7 and PW8 as the second accused's aunt and uncle and the owners of the properly and the role played by the appellant in arranging for 'Mr. & Mrs Goh' to sign P2 and P6. The court is in agreement with the learned HMS that the totality of the evidence adduced would show that the appellant and the two other accused were acting in concert to a common plan to cheat by selling the piece of land held under GM 199 Lot 833 Sungei Penaga, Mukim Damansara Petaling. The evidence adduced points to each of the accused persons having their own role to play.

[28] For the scheme to work, PW3 and the potential purchaser must be convinced that there was a piece of land for sale. Thus the role of the appellant in obtaining the duplicate title comes into play. Next, PW3 must be convinced as to the relationship or connection between the alleged owners and the second accused and the appellant. The court notes that it was the appellant who had started the story about the land belonging to the second accused's uncle and aunt, about the second accused owing the appellant monies, about the alleged uncle and aunt agreeing to sell the land to offset the loan. Thereafter, there were the steps taken to pass off PW7 and PW8 as the owners of the land and the role played by the appellant in arranging for them to sign the documents P2 and P6. And all these acts were carried out so that the potential buyers, when convinced that the owners of the land were selling the land, would agree to buy the land and pay monies towards the purchase of the land.

[29] In light of all this evidence, the court is satisfied that the learned HMS had arrived at the correct conclusion when she found that the prosecution had succeeded in proving a common intention among the three accused persons to commit the offence for which they were convicted.

CONCLUSION

[30] Thus, the court is satisfied that the learned HMS was not in error when she found that the prosecution had made out a case against the all the accused persons, including the appellant, beyond a reasonable doubt. The court thus finds that the appellant was properly convicted on the charge against him. Accordingly, the appellant's appeal is hereby dismissed.

Appeal dismissed.

Reported by Kohila Nesan